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MEMORANDUM

To: Administrative Office of the Courts
From: Spencer Price; Director, Statistical Analysis Center
Analyst: Charles Huenke; Research Analyst, Statistical Analysis Center
Subject: Title 11, § 2104 Pretrial Failure Report

Title 11, § 2104 requires the Statistical Analysis Center to “provide the court with a report of rates of re-arrest and failure to appear as required by defendants released by the court.” This memorandum provides the first such report on defendants assessed with the Delaware Pretrial Assessment Tool (DELPAT), which was initially implemented on January 1, 2019.

Defendants analyzed for this report are those with approved DELPAT assessments administered in Justice of the Peace Courts at initial appearances during the first quarter of 2019. Sampling was not part of the case selection process; all qualifying cases were reviewed for this analysis. Defendants’ records were reviewed to determine custody or release status, and to identify pretrial failures that occurred in times between initial risk assessments and dispositions on assessed cases.

Counting and failure rate calculations for this analysis are based on cases. Defendants could have multiple cases assessed on one or more dates during the quarter. Each qualifying DELPAT-assessed case was tracked separately for pretrial success or failure from the time of risk assessment to a “terminating” disposition. The terminating disposition concept is contrived for this analysis to include dispositions that are not necessarily final, such as entry into diversion, but mark the end of what would be typical pretrial bail/bond conditions on a specific case.

A primary step in the pretrial tracking process involves determining whether defendants are in custody or in the community (at risk for failure) during the pretrial period. While this might seem straightforward, a majority of defendants committed to custody during pretrial periods have multiple active cases with varying bail/bond conditions. Intensive review of bail and Department of Correction (DOC) records is often required to resolve custody and at-risk timelines.

The Center’s extraction and review of criminal justice information system data yielded 4,876 first quarter 2019 DELPAT-assessed cases for follow-up and pretrial failure rate tracking. Further analysis identified 690 of those cases with no opportunity for pretrial failure due to full custody during the pretrial period. Pretrial failure rates are therefore based on 4,186 cases where defendants had some at-risk time, including defendants released after initial custody (814 cases) and defendants released by the court with no initial custody (3,372 cases).

Table 1 shows counts of cases reviewed for this analysis, including monthly subtotals, from the first quarter of 2019. It should be noted that 24 of 690 “*Cases With No At-Risk Time*” were pending through March 2020. If follow-up is conducted after this report, there could be some shifting of case counts from that column to the “*At-Risk Cases With Initial Custody*” column.

Table 1

Initial DELPAT Month	Total Cases Reviewed	Cases With No At-Risk Time	Cases With Pretrial At-Risk Time	At-Risk Cases With Initial Custody	At-Risk Cases With No Initial Custody
January	1,684	273	1,411	258	1,153
February	1,509	208	1,301	280	1,021
March	1,683	209	1,474	276	1,198
<i>Quarter Totals</i>	<i>4,876</i>	<i>690</i>	<i>4,186</i>	<i>814</i>	<i>3,372</i>

For cases with no initial detention, the DELPAT assessment date marked the start of the pretrial failure tracking period. When defendants were initially held in custody on the DELPAT date, but released prior to case disposition, the pretrial failure tracking period started on their custodial release date.

Each case with any at risk time was regarded as having opportunities for failure in either or both failure categories (re-arrest and failure to appear) specified in Title 11, § 2104. The failure types, however, are not independent. For example, a released defendant could be arrested for a new crime before a scheduled appearance on the pending case. If the new arrest results in custody through the remaining pretrial period of the pending case, the defendant would not actually be at risk for failure to appear.

If a defendant had multiple failures in a pretrial period, only the first event of each failure type was counted per case. In other words, multiple failures to appear in the same case contributed no more to failure rates than a single failure to appear, and likewise for new criminal arrests. If a defendant had multiple cases pending concurrently, failure to appear was specific to each case, but a single new criminal arrest was counted as a failure in each case that was pending at the time the crime was committed.

Table 2 shows failure rate summaries for 4,186 cases with any pretrial at-risk time. Rates were calculated separately for each failure type, New Criminal Arrest (NCA) and Failure to Appear (FTA), and an overall rate representing failure of either or both types is included.

Table 2

Initial DELPAT Month	Cases With Any At-Risk Time	Failure to Appear (FTA) Rate	New Criminal Arrest (NCA) Rate	Any Failure (FTA and/or NCA) Rate
January	1,411	29.3%	28.9%	43.0%
February	1,301	27.7%	28.5%	43.4%
March	1,474	29.4%	28.5%	43.6%
<i>Quarter Totals</i>	<i>4,186</i>	<i>28.9%</i>	<i>28.6%</i>	<i>43.4%</i>

Failure rates presented in Table 2 are not necessarily final due to pending cases that could yet have failures of one or both types. As of March 31, 2020, there were 461 at-risk cases pending disposition; 25 of those remained without any pretrial failure, 240 had FTA but no NCA, and 30 had NCA but no FTA. There could also be a few cases that shift to the at-risk group if any defendants not yet released (17 defendants, 24 total cases) get released before disposition. While separate NCA or FTA rates could possibly rise to about 30%, the combined failure rate cannot exceed 44% given the number of cases remaining without any failure.

Moving forward, some important points should be considered regarding recent events and future reports. Observations thus far reveal that, under normal circumstances, it may take over 12 months from initial appearance in a selected time frame for stable pretrial failure rates to emerge. Disruptions brought on by the coronavirus pandemic will impact the system indefinitely with additional disposition delays and other abnormalities, such as unusual patterns of criminal activity, arrests, detention rates and longer at-risk times. Cases initiated beyond the first quarter of 2019 could have external influences that mask effects of bail reform initiatives.